

Rajasthan Tax Board, Ajmer

Appeal No. 13/2011/Jaipur

Appeal No. 14/2011/Jaipur

M/s Headstart Consulting Pvt. Ltd.

H-4/58, 2nd Floor,

Ramesh Marg, C-Scheme

Jaipur

...Appellant

VERSUS

Assistant Commissioner,

Circle-N, Jaipur

.....Respondent

D.B.

SHRI RAJEEV CHOUDHARY, MEMBER

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri S.K. Jain, Advocate

for Appellant

Shri Ramkaran Singh,

Dy. Govt. Advocate

for Respondent

Dated: 12/03/2018

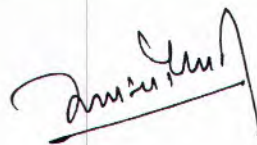
JUDGMENT

1. These appeals have been filed by the appellant dealer (hereinafter called the "appellant"), against order of the Deputy Commissioner (Appeals) II, Commercial Tax Department, Jaipur (hereinafter called the "appellate authority") who vide his order dated 06.12.2010 partly accepted the appeal against order of the Assistant Commissioner, Circle-N, Jaipur (hereinafter called the "assessing authority") passed under Section 25, 55 and 61 of the Rajasthan Value Added Tax Act, 2003 (hereinafter called the "Act") dated 11.01.2010, wherein tax, interest and penalty was imposed on sale of 'Digital Signature Certificate', as under:-

Appeal No.	A.Y.	Appellate Authority's order Details		Assessing Authority's order Details			
		Appeal No.	order dated	order dated	Tax	Interest	Penalty (Not under challenge in present appeals)
13/2011	2007-08	12/Appeals-II/RVAT/JAIPUR/N/2009-10	11.01.2010	11.01.2010	27,284/-	9,9910/-	54,568/-
14/2011	2008-09	11/Appeals-II/RVAT/JAIPUR/N/2009-10	06.12.2010	11.01.2010	91,460/-	16,000/-	1,82,920/-

Since both the appeals involve a common issue, therefore, these are decided by a common order. Copy of this order be placed on both the appeal files.

2. Brief facts leading to the present appeal are that the business premises of the appellant firm were surveyed on 07.08.2009 by ACTO, Ward II, Circle B, Jaipur and it was found that during the years 2007-08 and 2008-09, the appellant sold the 'Digital Signature Certificates' (in short 'DSC') treating the same as exempted goods and no tax was paid thereon. Later, the assessing authority after issuing a notice and hearing the appellant levied tax, interest and penalty treating the DSC as 'Intangible Goods' taxable @ 4% under Schedule-IV of the Act.
3. Aggrieved of this assessment order, the appellant preferred an appeal before the appellate authority who vide his order dated 06.12.2010, maintained the levy of tax and interest but set aside the penalty.
4. The learned advocate appearing for the appellant submits that the assessing authority passed the order ex-parte without giving proper opportunity of being heard and further submitted that DSC in question are not goods as they cannot be resold or transferred to any other person for use. He also submitted that a DSC is a mathematical scheme for demonstrating the authenticity of a digital message or document. A valid digital signature gives a recipient reason to believe that the message was created by a known sender, and that it was not altered in transit. Digital signatures are commonly used for financial transactions, and in other cases where it is important to detect forgery and tampering. In a simple manner, a digital signature authenticates electronic documents in a similar manner a handwritten signature authenticates printed documents. DSC provides a means of proving one's identity much like a Driving

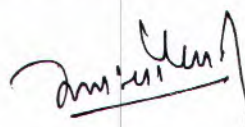


License or a Passport does in face to face interactions. He referred the following judgments in support of his arguments: -

- 1) Tata Consultancy Services V/s State of A.P.; 2004 (178) ELT 22 (SC)
- 2) McDonalds India Pvt. Ltd. V/s Commissioner of Trade & Taxes, New Delhi; 2017 (5) GSTL 120 (Delhi)
- 3) Imagic Creative Pvt. Ltd. V/s Commissioner of Commercial Taxes; 2008 (9) STR 337 (SC)

Learned advocate for the appellant also highlighted the Central Excise tariff HSN No. 8524 wherein the "CD-ROMs containing books of an educational nature, journal, periodicals(magazines) or newspaper" have been shown to attract NIL duty or these items are exempted from excise duty, so he tried to draw a parallel with items to that of the DSC. He, thus requests that as the DSC cannot fall under the category of intangible goods therefore, levy of tax and interest was ab-initio wrong, so request that impugned order of the appellate authority relating to tax and interest, may be set aside.

5. Learned Deputy Government Advocate appearing for the respondent supported order of the assessing authority and submitted that the assessing authority has arrived at a conclusion that appellant has sold the Digital Signature Certificate which essentially falls under the category of intangible goods, hence, the tax and interest has rightly been levied by him and order of the appellate authority on this count deserves to be confirmed.
6. He further submits that as per definition of the term 'goods' as given in the RVAT Act, 2003 the only exclusion available from purview of the 'goods' are newspapers, money, actionable claims, stocks, shares and securities. Since the digital signatures or the DSC as such, is not included in these exclusions therefore, the same being intangible goods, would be exigible to tax under the Act. It was also submitted that may be the DSC device is



given for a particular period, still it would fall in the category of intangible goods and tax would be leviable on it.

7. We have gone through the submission of both the parties and perused the relevant record. In this regard, it would be appropriate to have a look at the relevant entry in the Schedule-IV and the definition of the term 'goods' as given under section 2(15) the Act. The entry No. 3 of Schedule - IV of the RVAT Act, 2003 as prevalent during the period 2007-08 and 2008-09, is as under:-

S.No.	Description of Goods	Rate of Tax%	Conditions, if any
3.	All intangible goods like copyright, patent, REP license etc.	4	

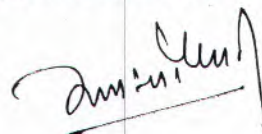
The definition of "goods" as appearing in clause (15) of section 2, is as under:-

"(15) "goods" means all kind of movable property, whether tangible or intangible, other than newspapers, money, actionable claims, stocks, shares and securities, and includes materials, articles and commodities used in any form in the execution of towards contract, livestock and all other things attached to or forming part of the land which is agreed to be severed before sales or under the contract of sale;"

Similarly, the definition of "goods" as appearing in clause (7) of section 2 of the Sale of Goods Act, 1930 is as under:-

(7) "goods" means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;"

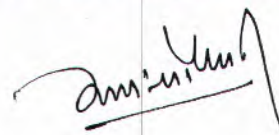
8. The term "goods" has been thoroughly examined by the Hon'ble Supreme Court in various judgments and we are privileged to have gone through some of them. Appellant too has referred some judgments and we have very respectfully gone through those judgments of the Hon'ble Supreme Court as well as of the



Hon'ble Delhi High Court. In the lead case of Tata Consultancy Services Vs State of A.P. (supra) the Constitution Bench of the Hon'ble Supreme Court has also referred and relied upon in its judgment the law laid down relating to scope of the term "goods" under the sales tax law, as earlier propounded in the cases of **Commissioner of Sales Tax, M.P. Vs M.P. Electricity Board (1961) 1 SCC 200, State of A.P. Vs National Thermal Power Corporation Ltd. and Ors. [2002] 3 SCR 278 and Associated Cement Companies Ltd Vs Commissioner: 2000 (128) ELT 21 (SC)**, and the Hon'ble Apex Court has held as under:

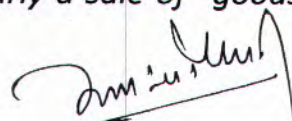
"16. Thus this Court has held that the term "goods", for the purpose of sales tax, cannot be given a narrow meaning. It has been held that properties which are capable of being abstracted, consumed and used and/or transmitted, transferred, delivered, stored or possessed etc. are "goods" for the purposes of sales tax. The submission of Mr. Sorabjee that this authority is not of any assistance as a software is different from electricity and that software is intellectual incorporeal property whereas electricity is not, cannot be accepted. In India the test, to determine whether a property is "goods", for purposes of sales tax, is not whether the property is tangible or intangible or incorporeal. The test is whether the concerned item is capable of abstraction, consumption and use and whether it can be transmitted, transferred, delivered, stored, possessed etc. Admittedly in the case of software, both canned and uncanned, all of these are possible.

"18. The question whether electricity can be termed as "goods" again arose before a Constitution Bench of this Court in State of A.P. v. National thermal Power Corporation Ltd. and Ors. [2002] 3 SCR 278. This Court, noticing the earlier authorities, held that the definition of "goods" in Article 366(12) of the Constitution of India was very wide and included all kinds of movable properties. It was held that the term "movable property" when considered with reference to "goods" as defined for the



purposes of sales tax cannot be taken in a narrow sense. It was held that merely because electric energy was not tangible or would not be moved or touched like, for instance, a piece of wood or a book it would not cease to be movable property when it had all the attributes of such property. It was held that electricity was capable of abstraction, consumption and use which, if done dishonestly, was punishable under Section 39 of the Indian Electricity Act, 1910. It was held that electric energy could be transmitted, transferred, delivered, stored and possessed in the same way as any other movable property. It was held that electricity was thus "goods" within the meaning of the Sales Tax Act."

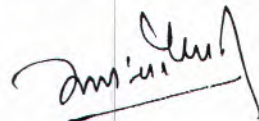
"27. In our view, the term "goods" as used in Article 366(12) of the Constitution of India and as defined under the said Act are very wide and include all types of movable properties, whether those properties be tangible or intangible. We are in complete agreement with the observations made by this Court in Associated Cement Companies Ltd. (supra). A software programme may consist of various commands which enable the computer to perform a designated task. The copyright in that programme may remain with the originator of the programme. But the moment copies are made and marketed, it becomes goods, which are susceptible to sales tax. Even intellectual property, once it is put on to a media, whether it be in the form of books or canvas (In case of painting) or computer discs or cassettes, and marketed would become "goods". We see no difference between a sale of a software programme on a CD/floppy disc from a sale of music on a cassette/CD or a sale of a film on a video cassette/CD. In all such cases, the intellectual property has been incorporated on a media for purposes of transfer. Sale is not just of the media which by itself has very little value. The software and the media cannot be split up. What the buyer purchases and pays for is not the disc or the CD. As in the case of paintings or books or music or films the buyer is purchasing the intellectual property and not the media i.e. the paper or cassette or disc or CD. Thus a transaction sale of computer software is clearly a sale of "goods" within



the meaning of the term as defined in the said Act. The term "all materials, articles and commodities" includes both tangible and intangible/incorporeal property which is capable of abstraction, consumption and use and which can be transmitted, transferred, delivered, stored, possessed etc. The software programmes have all these attributes"

9. The appellant has referred judgments of the Hon'ble Supreme Court in case of (i) Imagic Creative Pvt. Ltd. V/s CCT: 2008 (9) S.T.R. 337 (SC), and (ii) McDonalds India Pvt. Ltd. Vs. Commissioner of Trade & Taxes, New Delhi: 2017 (5) G.S.T.L. 120 (Delhi). In the case of Imagic Creative Pvt. Ltd. the matter pertains to as to whether Service Tax and VAT exclude each other in a composite contract when the service provider was paying service tax. In the McDonalds case, the issue relates to the royalty payable under franchise agreement for use of trademark and as to whether this would be a sale or a service. Since the present matter is different from subject matter of both the judgments hence, these judgments can't be applied in the instant case.
10. The Hon'ble Supreme Court has put to rest the controversy as to whether any distinction is sought to be made between tangible and intangible properties as well as the corporeal and incorporeal material. The relevant portion of the TCS judgment in which the definition of 'goods' as given in the Sale of Goods Act, 1930, has also been discussed, is as follows:-

"The definition of 'goods' in Sales of Goods Act is also of wide import which means every kind of movable property. Property has been defined therein to mean the general property in goods and not merely a special property. It is not much in dispute that 'goods' would comprehend tangible and intangible properties, materials, commodities and articles and also corporeal and incorporeal materials, articles and commodities. If a

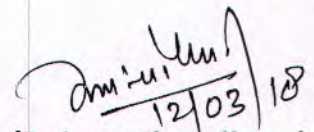


distinction is sought to be made between tangible and intangible properties, materials, commodities and articles and also corporeal and incorporeal materials, the definition of goods will have to be rewritten of comprising tangible goods only which is impermissible."

10. The main issue for our consideration is as to whether the DSC can be recognized or treated as intangible goods or not and the aforementioned judgment of the Supreme Court has laid down the basic tenets for any item to be held as the "goods". The test is whether the concerned item is capable of abstraction, consumption and use and whether it can be transmitted, transferred, delivered, stored, possessed etc. Since the product in question i.e. Digital Signature Certificate (DSC) is a customized software which enables its owner to authenticate any electronic data and it is capable of abstraction, consumption and use and it can be transmitted, transferred, delivered, stored, possessed as well, therefore, we are of the considered view that in light of the definition of the term 'goods' and the law as laid down in this regard by the Hon'ble Supreme Court in Tata Consultancy Services case (supra) and other cases, the Digital Signature Certificate (DSC) squarely falls under the category of 'intangible goods' and liable to payment of tax under entry 3 of the Schedule-IV appended to the Act as 'intangible goods'.
11. Resultantly, the impugned appellate orders are upheld and the appeals are disallowed.
12. Order pronounced.



(Omkar Singh Ashiya)
Member



(Rajeev Choudhary)
Member